CIVIL LIABILITY LEGISLATION AMENDMENT (CHILD SEXUAL ABUSE ACTIONS) BILL 2017

Returned

Bill returned from the Council with amendments.

As to Consideration in Detail

On motion by **Mr D.A. Templeman (Leader of the House)**, resolved —

That the Council's amendments be considered in detail forthwith.

Council's Amendments — Consideration in Detail

The amendments made by the Council were as follows —

No 1

Clause 5, page 14, after line 15 — To insert —

Division 5 — Review of Part 2A

15M. Review of Part

(1) The Minister must carry out a review of the operation and effectiveness of this Part as soon as is practicable after the third anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 5 comes into operation.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

No 2

New Part 2A, page 14, after line 16 — To insert —

Part 2A — *Criminal Injuries Compensation Act 2003* amended

5A. Act amended

This Part amends the *Criminal Injuries Compensation Act 2003*.

5B. Section 68 amended

After section 68(1) insert:

(1A) Subsection (1) does not apply if the amount referred to in subsection (1)(b) was reduced to take into account the compensation award referred to in subsection (l)(a).

No 3

Clause 8, page 16, after line 30 — To insert —

(7) The Minister must carry out a review of the operation and effectiveness of this section and Part 7 as soon as is practicable after the third anniversary of the day on which the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017* section 8 comes into operation.

(8) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

No 4

Long Title, page 1, after the first bullet point insert —

- **the *Criminal Injuries Compensation Act 2003*; and**

Mr J.R. QUIGLEY: I move —

That amendment 1 made by the Council be agreed to.

Mr P.A. KATSAMBANIS: As the Attorney General is moving this amendment, I seek an explanation about its origins and why the government has chosen to support it.

Mr J.R. Quigley: Why the government has chosen to support it?

Mr P.A. KATSAMBANIS: Yes—the origins as well.

Mr J.R. QUIGLEY: This amendment comes from the Legislative Council and was moved in the Legislative Council after the Legislative Council committee to which it had been referred recommended it.

Although we do not oppose a review, it was the government's position that five years would be more appropriate because, as proceedings have to be commenced and litigation conducted, we did not think enough data could be accrued after three years. We thought that five years would be a more appropriate period for enough cases to get into the District Court for there to be sufficient data for a proper review to be conducted, but the Council, in its wisdom, decided on a three-year review despite the government's views. We were happy to consent to that because we do not want this bill held up.

Mr P.A. KATSAMBANIS: We do not want to see the bill held up either, but we want it to be a workable bill that will achieve the laudable and important aims that it sets out to achieve. It is interesting that the Attorney General said that the government thought it would be a good idea to have a five-year review period, because when the bill was first introduced into this place and until it went to the other place, it had no review clause whatsoever. In the first instance, why did the government consider it appropriate for it not to have any review clause at all?

Mr J.R. QUIGLEY: The operation of the bill will be before the courts on a continual basis. When people bring their actions, that will all be conducted in open court. We did not think it was necessary to include a review clause. Unfortunately, the opposition made a serious error. The review clause was brought forward by the shadow Attorney General, Mr Mischin. His review clause was hopelessly flawed in that it sought a review of the amending bill, not of the substantive legislation. The flawed amendment of the shadow Attorney General was to review just the amending legislation, not to review the substantive law. We could have sat there quietly and allowed the shadow Attorney General's amendment to go through. He would have been embarrassed when he subsequently realised when it came down to this place and I got on my feet to point out that his flawed amendment was only seeking a review clause of the amending legislation and not of the substantive legislation. The government came to his aid in the Council and put forward its own amendment, so that it was a review of the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017 rather than the amending legislation. We understand what the shadow Attorney General was trying to achieve but he did not do it, so the government hopped in and put it to rights.

Mr P.A. KATSAMBANIS: It is interesting that the Attorney General focuses on the process in the other place rather than the substantive question that I have asked, which is: why did the government not include a review clause of any sort in the bill when it was presented to this place? However, I will take that as a mea culpa—that is, a "we forgot about it" response.

Mr J.R. Quigley: No.

Mr P.A. KATSAMBANIS: The Attorney General did say that this will be litigated in open court. Yes, it will be litigated in open court if people have both the legal ability and in some cases the financial ability to get to open court. Sometimes it is the cases that do not get to court that cause the problems. They are the sorts of things we need to review. What we know to be true is that the government had only extremely limited consultation around this bill before it introduced it. We also know that this Attorney General, as he has done a few times in the period he has been Attorney General, labelled members of the opposition all sorts of completely untrue and nasty things by claiming that some members of the opposition wanted to unnecessarily delay this bill and cause further hurt to victims and their families who may actually be assisted by this bill. That was an unfortunate and unfair slur on members of the opposition, but, as I said, it is not the first time the Attorney General has done that.

Nobody wants to delay the passage of this bill. What we want to do is to introduce legislation that works—legislation that will allow the victims and their families to get some sense of justice, because the victims can never get justice for what has happened; we have debated that before. When it got to another place, members of that place did what all government legislators should do. We were denied doing that in this place by the use of the government's sheer numbers, because it has a big backbench and it can ram through anything it wants to, whether it is flawed or unflawed, whether it is duly considered or not, without worrying about the consequences.

I will explain what happened in the other place. It was not Liberal Party members who did it, because the Liberal Party does not have a majority in the other place; the government does not either, and that is the issue. Members of the Liberal Party, National Party and crossbench thought, "Hang on. Hasten slowly! It's taken this long. A couple of weeks or months isn't going to hurt anyone too much." We will get to that aspect when this matter is introduced in a minute, but I will leave that out for now. Those members thought that this legislation needed to be looked at and sent the bill off to a committee. The committee came back with some recommendations, and, surprise, surprise, here we are today: the government has effectively accepted those recommendations. It is true that it wanted a five-year period; we thought a three-year period was more appropriate. The majority of the crossbench agreed with the three-year period. The three-year period is pretty important in this case because in many ways this is revolutionary and new legislation. We are entering into a new era. It would be folly to sit back and say, "We'll come back and look at it in five years' time, after the next election and after the effluxion of time." If there are any problems with this legislation or if any issues arise from its operation, especially unintended consequences, we should find out about them sooner rather than later, because, primarily, we want to assist the

victims of horrific and historic child sexual abuse, and we want to give them a pathway to access this legislation in practice not just in theory. We find in the amendments before us now that the Legislative Council did the job that the government should have done in the first place—that is, properly look at what clauses should be in the legislation. It did its job as a house of review and has sent this bill back with some small but rather important amendments.

Mr S.K. L'ESTRANGE: I would like to hear more from the member.

Mr P.A. KATSAMBANIS: The Legislative Council has sent this bill back to this house with four very small and simple amendments. They are contained on one piece of A4 paper. They are not voluminous, but they are critically important. Make no mistake, if this bill had not been reviewed by the other place, and if members of the other place had been bullied into passing this bill without sending it to a committee, there would be no review clause at all. That would have meant that if this legislation was not working, there would have been no process—none at all—for victims to ask Parliament to change the legislation, to improve it and to make it workable. They would have had to rely solely on representations to the Attorney General or the department or the government. Now there is a clear legislated review process, and the report from that process will come to these houses of Parliament so that we can all look at it. The review will be conducted in an open and transparent manner, as is required by the legislation.

I have expressed my views on this legislation before. I hope it has no flaws. In particular, I hope that there is no use of legal process by certain people who might—I am searching for the right word—suffer a significant financial penalty, or organisations that might suffer significant financial consequences, as a result of the introduction of this legislation. I hope that they do not stymy the operation of this legislation. I hope they do not get it caught up in legal debates that deny victims and their families at least some element of compensation, although it will never give them back what they had before. It will never be able to properly compensate them fully, but at least it will result in some financial compensation. That is why we need a review clause. That is why the process here has worked. It has worked not because of what the government has done. It wanted to ram this bill through this place and shame the other place into ramming it through quickly. It is not the government that has this review clause; it was members of the Legislative Council. The government thought five years would be better. I am glad that in the end the government accepted that we need a review clause, like so much other legislation that is passed through this place has a review clause, and that it has accepted, even begrudgingly, that three years is a worthwhile period. I imagine that after the representations all members have received from victims who we know are out there—even some of the high-profile cases—all members know that as soon as the government introduces this legislation and brings it into operation, cases will start to run. Therefore, I do not think that three years is too short a period for all of us, and especially any reviewer, to get a flavour of the sorts of issues that may arise in the actual operation of this legislation.

I do not condemn the government for bringing forward this legislation—not at all; in fact, I applaud it. In my second and third reading contributions, I applauded the government for improving the private member's bill from the previous Parliament that has not been passed in this place. But the government cannot simply run away and say, "We have done this. We're going to forget about it. We'll never look at it again." It needs to embrace the concept of reviewing revolutionary and radical legislation. Even as the government begrudgingly is accepting this particular clause, I think it shows that the system of parliamentary democracy in this state will not be railroaded by a government with a big majority in one house but that it will function properly to review legislation and make it better.

Mrs L.M. HARVEY: I am very pleased to see that the government is supporting these amendments.

Several members interjected.

Mrs L.M. HARVEY: Are we done?

I am pleased for a couple of reasons that the government is supporting these amendments. Firstly, government support for these amendments in this place means that the legislation will be finalised today and there will be no further delays to this legislation becoming law, enabling victims of child sex abuse to begin civil litigation cases against the perpetrators of abuse. Everybody in this chamber agrees that that is the best course of action. That is why we see some very brave and courageous campaigners in the Speaker's gallery today to see this legislation pass. Secondly, I am pleased that the review is specific to these amendments to enable victims of child sexual abuse to litigate civilly against perpetrators. A three-year review clause for those specific amendments will ensure that if the defenders, if you like, of these litigation suits play with the legislation and use delaying tactics, putting hurdles in the way of victims seeking rightful compensation, there may be an opportunity within a short time after that three-year period to make some amendments to the legislation to prevent that kind of bullying behaviour. We know that victims have been subject to that kind of bullying behaviour by various institutions and organisations in the past. A three-year review clause gives us an opportunity to see whether cases are being successfully pursued,

what the hurdles and roadblocks are, and what needs to be amended to ensure a seamless pathway to accessing compensation for these victims, and for perpetrators to be held financially accountable for vile acts against individuals that have caused them significant mental, physical and financial trauma. I support this amendment. The opposition certainly wants to see this legislation pass through this place expeditiously. A review clause in legislation is a very sensible way of providing a mechanism to make corrections in the shortest possible time frame, if there are crabs in the legislation and a need for improvement in the interests of victims' rights. I have no more to add. I would like to implore members to seek to have this legislation passed so that those who have been campaigning for a long time can get on with seeking a compensatory remedy.

Mr J.R. QUIGLEY: I will speak to each of those contributions in the order in which they were made, firstly that of the member for Hillarys. It sounded very good in its presentation, but it was nothing more than codswallop. I do not think that is an unparliamentary term. I will go through the member's contribution to explain why it was nonsense. Firstly, it was said that the government rammed this legislation through this chamber by use of its numbers in this house. This bill did not go to a division; it was passed unanimously on the voices. It was not the government bullying a bill through, as was falsely alleged by the member for Hillarys. He supported the bill. I was here when he and other members opposite spoke in support of it and voted for it. It was not a case of bullying by the government using its weight of numbers at all. Secondly, we are lucky we have the Legislative Council to insert this necessary review clause, because not one member of the opposition in this place, when the bill was before the chamber, raised the need for a review clause. An amendment for a review clause was certainly not moved by any person in this chamber. Firstly, there was no bullying—that is a false allegation—and, secondly, the opposition in this chamber did not see the need for a review clause; it did not breathe a word about it.

Thirdly, let us make no mistake that this review clause, as it is before this chamber, was moved by the government in the Council, because the opposition's effort in the Council was so hopeless that its review clause sought to review only the amending legislation, not the substantive law. What the member for Scarborough said about the need to know about the operation of this act as soon as possible would never have happened under the amendment that was on the notice paper in the Legislative Council, because it was not an amendment to the legislation, but only to the amending bill.

Fourthly, as to whether there was unnecessary delay, and the opposition's desire to see this bill advanced for the benefit of the victims, the debate went on for days in the other place. The victims were coming to me asking how long this was going to go on for. They said, "They're obsessing about you, Attorney General; you're the only person the opposition is talking about up there." I do not care; I have not read the full *Hansard*, and it does not worry me, but what happened up there worries the victims; they saw me several times during the debate.

The government, seeing that the Council was intent on having a review clause, came to the assistance of the Council and inserted a proper review clause, because the opposition's shadow Attorney General had stuffed it up and put the review clause on the wrong piece of legislation. We have corrected that; the government did not want to see the shadow Attorney General so badly embarrassed that the penny dropped when it came back here. We were quite happy to help them out and come to a conclusion. This is the review clause that the government moved in the Legislative Council. We agreed to the three-year review because we knew that the five-year review would not be supported on the numbers. We think it is a bit too short, but we will just see what the report is like in three and a bit years' time. I repeat that no member of the opposition raised a breath of concern about the lack of a review clause in this chamber. There was no motion for an amendment to insert a review clause. This is the government's review clause, and we commend it to the chamber.

Mr P.A. KATSAMBANIS: The Attorney General is wont to have rhetorical flourishes that do not always equate with reality. Despite indicating strong support for this legislation, many members who spoke in this chamber spoke about concerns about the need for this entire bill to be reviewed. It was very clear. I do not know what happens on the government side, but members of the Liberal Party work together with our upper house colleagues. We work in tandem. It is quite evident sometimes, on reading the *Hansard* from the other place, that that may not necessarily happen between ministers of this government and their representatives in the other place, which is why sometimes we have to come back in here and interrogate them. The fact remains that this bill came to this place without a review clause. The opposition highlighted in this place its strong concerns, not about the intent of the legislation—we support it, applaud it and we want it to go through—but about the pointlessness of passing legislation that has great intent but does not work. The Legislative Council decided that the legislation needed a review clause. The minister can blame whoever for drafting the right clause. The government clearly wanted a five-year review clause. It knew it would not get that, so it drafted a three-year review clause. The opposition is happy with that. We support this amendment. It is substantially the same as what was recommended by the committee in the other place. As I said, the three-year time frame will allow the department and the public, in the future, to highlight any flaws in the legislation as soon as possible after it comes into operation. This also begs the question of when the bill will come into operation, assuming it passes today. It is clearly the Attorney General's

intent that the bill be passed today, but when will it come into operation? Can it come into operation immediately, or are there any matters that may stop clause 5, which is being amended, from coming into operation immediately after the bill receives royal assent?

Mr J.R. QUIGLEY: The first point was whether government members in this chamber liaise with those in the other chamber. They do. I will prove they do so that we can put the member's query to rest. The amendment moved in the other chamber read —

> **New Part 4**
>
> **Hon Michael Mischin**: To move —
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> Page 20, after line 24 — To insert:
>
> **Part 4 — Review of Act**
>
> **11. Review of Act**
>
> (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the 3rd anniversary of the day on which Part 3 of this Act comes into operation.

There was the flaw. The flaw was that "this Act" is the amendment act that results from this bill that has about 10 clauses. If that amendment had been allowed to go through, in three years' time the reviewer would have had to review the 10 clauses of the amendment bill, not the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2017. He would have come and said, "It's effective because it amended the other act." Of course the leader of the government in the other place came to me—there is teamwork!—and asked whether she should allow the amendment to go through as was and let the poor old shadow Attorney General wake up after the event and realise his amendment was flawed and that all that he achieved was a review of the amendment act, or whether we should assist the member by putting in the actual act that would need to be amended. So there we are. We proved it: we engage in teamwork. I was gracious. I said, "Don't make a fool of him; let's help him. Let's help the shadow achieve what the shadow is trying to achieve."

I turn to commencement. The act will commence upon proclamation. There was some debate about this in the other chamber. A very important provision in this bill deals with costs, so that the costs will be limited to scale. That requires the Legal Costs Committee to make a determination on costs. We think that determination will take six to eight weeks to make. We do not want the act to come into operation before that. We know that already there are eastern states lawyers travelling to the south west, trying to vacuum up plaintiffs. One of them shares a name with the federal Attorney General, but I do not think he is involved in it in any way; it is Porters Lawyers of Sydney.

Mr P.A. Katsambanis: Not at all, mate. I can tell you that much.

Mr J.R. QUIGLEY: He is not an ambulance chaser, but it so happens that a firm is going around trying to vacuum up plaintiffs now. We do not want any of these victims exploited by signing up to costs agreements in advance of the determination of the Legal Costs Committee. After the bill passes this chamber and completes its passage, we would like the act to come into operation on the same day, or the day after, the Legal Costs Committee confirms scale costs in these matters. That very important part will be locked down so that there is no exploitation of victims who will become plaintiffs.

Mr P.A. KATSAMBANIS: That raises another question. I know the Attorney General is a little obsessed by the former Attorney General—the current shadow Attorney General in the other place—and we could say who is more obsessed with the other, but I will leave it at that.

Mr J.R. Quigley: I have not hardly mentioned his name except for now!

Mr P.A. KATSAMBANIS: But the Attorney keeps referring to things that are not really germane to the amendments before us, and then accuses other members of delaying. On this scale costs matter, this bill will bring in that restriction—correct me if I am wrong—so given that we have a legislative restriction introduced by this bill, why do we need an additional process by appointing, effectively, a quango, a costs committee, when the primary legislation should take precedence over any rulings or determinations of the costs committee?

Mr J.R. QUIGLEY: The Legal Costs Committee, of course, is an independent statutory body. After the independent statutory body makes its determinations, they become part of the rules of the court for costs. Under "Caps on legal fees", in clause 15L, it reads —

> An agreement must not be made for a law practice to receive, for appearing for or acting on behalf of a person in a child sexual abuse action, any greater reward than is provided for by any costs determination that is in force.

That prescribes that an agreement should not be made for costs in excess of any costs determination in force. So we have to have a determination in force to for this proposed section to hold it to that determination. That is why we have to wait for the independent Legal Costs Committee to make a decision. It will obviously be following this legislation and debates in this chamber. I cannot as the Attorney General tell—you called it a quango—an independent statutory authority what to do. It would be quite improper for any Attorney General to give a direction to an independent statutory authority. It has to make its own determination. Once it has made its own determination, that will come into play. The proposed new section on page 13 of this bill reads —

> An agreement must not be made for a law practice to receive, for appearing for or acting on behalf of a person in a child sexual abuse action, any greater reward than is provided for by any costs determination that is in force.

That determination must be locked in by the independent Legal Costs Committee. As soon as that happens, we can proceed to fire it all up.

Mr P.A. KATSAMBANIS: I note that the Attorney General is usually a stickler for correctness on this: he mentioned new clause 15L; for completeness, it is proposed new section 15L being introduced by clause 5 of this bill.

Mr J.R. Quigley: You are quite right.

Mr P.A. KATSAMBANIS: Nevertheless, I am happy to follow that. My question is simple: If the costs committee is an independent statutory body that cannot and will not be influenced by the Attorney General, how can we be certain it will make this determination—and if it even chooses to make such a determination, how can we be certain it will do it within six to eight weeks?

Mr J.R. QUIGLEY: Under the Legal Profession Act, the Legal Costs Committee receives submissions from interested parties. Section 278 of the Legal Profession Act states —

> (1) The Legal Costs Committee must —
>
> (a) give written notice of its intention to make or review … to the Law Society; and
>
> (b) publish notice of its intention in 2 issues of a … newspaper …

Section 278(2)(c) states —

> specify the period within which the submissions may be made (being a period of not less than 30 days after the day on which the notice is last published under subsection (1)(b)).

There is on foot a review of District Court costs by the Legal Costs Committee. The government intends to ask the costs committee to include its determination on scale costs as part of that review. It is already underway. It will expedite the matter if this particular bill is passed today, as I am confident it will be, and then the submission can be made by the government through the Solicitor-General that the appropriate costs in these matters are as they are and as the costs committee has determined in workers' compensation matters and motor vehicle injury claims against Insurance Commission of WA; that is, scaled costs, so that plaintiffs cannot be bled. Once the costs committee has made a determination, the government intends to move to fire up the legislation.

Mr P.A. KATSAMBANIS: I take it from that roundabout answer to my question that the actual answer is the government cannot force the Legal Costs Committee to make this determination. The government intends to make a submission and I support that; I think it is a good thing in these particular cases. I note that the clause that the Attorney General referred to, which will insert section 15L, attempts to apply this reasoning of a cap on fees not only to agreements that are made before the commencement of these parts of the bill, but also to any agreements that have been made previously. That makes sense given that the Attorney General said the "ambulance chasers" are out there already trying to sign up people. This side often talks about the ambulance chasers being significant supporters and funders of the Labor Party, but we will leave that aside for the moment. The fact is the government has now indicated that the commencement of the significant and substantive parts of this legislation will effectively be conditional on the making of a costs determination by the Legal Costs Committee under the Legal Profession Act 2008. I accept that the Attorney General will make the submission to the costs committee on behalf of the government. I accept that the people on the costs committee are logical people, but the government is essentially asking for two things: firstly, to incorporate into an ongoing review of District Court fees this new concept that the costs committee has not had to consider before; and, secondly, to make the determination to cap fees. I do not question the mechanism used because to legislatively take the costs committee out of the equation would tread on some toes and interfere with a whole heap of legal niceties that both the Attorney General and I understand to be long-held practices of the legal profession. We should respect those practices. I do not cast any aspersions

whatsoever on the costs committee; I think it will do the right thing. Obviously the Attorney General has indicated he will make that submission and let us hope it happens sooner rather than later.

Mr J.R. QUIGLEY: As to the last part of the member's comment that it happen sooner rather than later, on 24 June 2016 the costs committee made its latest determinations on costs pursuant to the Legal Profession Act. Motor vehicle fees are in the schedule to that determination. Section 276 of the Legal Profession Act requires that —

> (1) The Legal Costs Committee must review each costs determination in force at least once in the period of 2 years after it was made and in each period of 2 years after that period.

District Court costs were last reviewed in 2016. The government spoke to the costs committee and, with the passage of this bill, the committee is prepared to bring the determination on for costs awarded to plaintiffs under the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill. It is prepared to make a determination within the current review period, which is on right now. The member is quite right that the government cannot issue an order as to what those costs should be. It is fairly clear from the unanimous support of this house that it should be scale costs. The power of the Attorney General is prescribed under section 276(2). It provides —

> The Attorney General may at any time direct the Legal Costs Committee to review a costs determination in force and the Legal Costs Committee must carry out that review as soon as practicable after being so directed.

The committee has already indicated that it will bring this on as part of the current review.

The member understands some of the legal niceties. What it would require legislatively to cap the fees is not an amendment to the civil liability legislation; we would have to amend the Legal Profession Act and put in a new subsection in section 276 or 277 singling out this one action.

Mr P.A. Katsambanis: We could have done it.

Mr J.R. QUIGLEY: It would have singled out this one action —

Mr P.A. Katsambanis: I understand that.

Mr J.R. QUIGLEY: If those costs have to be reviewed at any time, it requires a review of the Legal Profession Act, whereas it is more elegantly done —

Mr P.A. Katsambanis: You would not be reviewing costs then; you are putting in a cap. The costs can continue to be reviewed; you can put in a cap. Anyway, you have chosen not to do that. I understand why; I am not criticising.

Mr J.R. QUIGLEY: We are doing it through the costs committee. I have discussed this with victims very recently, who are even present in the chamber, and explained the time that that will take. The victims are comfortable. I have spoken to the plaintiff lawyer who is acting, as far as I know, for most Western Australian victims. A practitioner by the name of David Bayly is acting for all of the victims. It is Shine Lawyers, but David Bayly is the partner in charge of the action. He is very comfortable with both the scale costs and the time it will take for the determination. He said they had been waiting years for this and if it is eight weeks or 10 weeks, it is neither here nor there. They can prepare the materials and they know what is coming. This bill is passing and once that costs committee has made its determination, they will be in a position to progress with that.

The ACTING SPEAKER (Mr I.C. Blayney): Members, I just say that this is amendment 1 we are dealing with and it would be good if you could confine your comments to the amendment.

Mr P.A. KATSAMBANIS: I will. This shows the value of the process of considering these matters in committee so we can find out what is going on. I do not ascribe any malice to the Attorney General in this, because perhaps he was not expecting to go into questions about this. He is the one who raised them, so I thought I would ask him some questions. It is interesting that a couple of questions ago I got an answer that I will paraphrase; I do not want to put words in anyone's mouth unfairly. The answer was that the government can make a submission to the costs committee and it intends to do so. In this last answer we also got the additional information that the government had already spoken to the committee and indicated what might be coming. Over a series of questions we have a more complete answer and I thank the Attorney General for that. I do not think he was being deliberately misleading at all in his first answer, it is just that we have ended up getting more information as we have delved into things. With that, I do not have any other issues to discuss about amendment 1 before the house. As I indicated right at the outset, the opposition supports this amendment. It is an amendment that came out of the review process undertaken by the Legislative Council and we are glad that now all parties seem to be on side and we can get this very important review clause 1.

Mr P.J. RUNDLE: I will very briefly make a couple of points prior to going to the next amendment. Most importantly, I would like to acknowledge the survivors in the gallery, Kirsty, Jodie and Joe. I think it is also very important that we acknowledge their supporting families as well. I am not making a speech, but I would like to point out the McPharlin family, Jillian Beale, and her husband Kim in his absence. I have been listening to the semantics of some of the comments here. From my understanding, members of both parties provided some important contributions in the other place. I know some of them were extended and I know the survivors were quite exasperated by the length of the debate, but I would just like to point out that members of my party were concerned about two things. One of those was potential restrictions on the ability for victims to claim compensation. They had concerns about the original legislation restricting the ability and amount of compensation. This was also in relation to the federal government and so forth. That was one thing they were a bit concerned about. The other was the costs that the member for Hillarys has been referring to. I am glad I have some clarity about the costs committee today. I think that is a really important element. A couple of our members, Hon Colin de Grussa and Hon Martin Aldridge, were quite concerned the costs, the cap and the potential to make sure a lid is kept on that for the victims and their families. Any further clarity would be welcome, but I am glad the Attorney General mentioned the lawyers who are representing the majority of victims and that he has been consulting with them, because I think that is an important element for all of us.

Mr J.R. QUIGLEY: I thank the member for that contribution. Yes, I have been consulting with the lawyers. This matter first came before me when a woman, who was a constituent—she happens to be in the gallery at the moment—came to me some years ago because she was a victim. It was Mrs Kirsty Pratt, and I need not hide that because she has been quite open about this. She was a victim at Condingup Primary School. She said that she wished to bring a civil action against the state for the terrible abuse she suffered at that school, as did her co-students, and her lawyer Mr Bayly had written to the then Attorney General, Hon Michael Mischin, asking whether he would indicate that he would not rely upon the statute of limitation, because it does not have to be pleaded. It is up to the state whether it chooses that defence or not. The answer came back to Mrs Pratt's lawyer that no, the state would rely on that limitation period if a writ was filed. Hon Michael Mischin was saying, "No, we will close you out of court if you bring a writ." That is why Mrs Pratt then commenced the campaign, firstly in my office, and then subsequently more publicly, to bring this forward. The next question that arose was that of caps on fees. We also had to consider, like some other states have done, whether there should be a cap on damages. We determined that we cannot buy or put a cap on justice, so it would be uncapped. We know the potential liability that opens the state up to in uncapped damages, but the important thing is that justice is achieved for the victims.

The third issue the member raised related to the commonwealth scheme of national redress. That is a bit of a misnomer, if I may say so. I want to say in this chamber quite clearly that the commonwealth does not put 10c towards the national redress scheme—the commonwealth scheme. It prints the letterhead and has a couple of bureaucrats in Canberra. A victim then makes an application to the bureaucrats in Canberra, to the national scheme, and the bureaucrats in Canberra then issue the victim with an award or an invoice to take back to Western Australia for the Western Australian government to pay. The commonwealth gets the credit for a national scheme, but it is all our constituents who are actually paying it. It irritates me a bit when the commonwealth goes on about this national scheme when this state in its current situation with the GST et cetera is carrying the weight of it. We have not yet indicated that we will join the national redress scheme because, notwithstanding the fact that we are paying the money, the commonwealth has set out rules as to whom we can pay the money to. More precisely, we are not allowed to pay our own money to people who have suffered subsequent convictions. We all know that child abuse is cyclical. The victim becomes an abuser later in their life. The commonwealth also says that anyone who has copped a five-year term of imprisonment cannot be paid. A vulnerable person who has been the victim of child sexual abuse at the age of 15 might at the age of 35 get drunk, have an accident and kill someone, and get a term of five years for dangerous driving causing death, and by reason of that they are not eligible for compensation. I am holding the line with the commonwealth at this stage. Secondly, the member for Cottesloe's predecessor, I have said this here before, urged me not to give up on child migrants who were brought out to the country by the commonwealth and then placed in different institutions around Australia. I am going to run out of time; I do not know whether anyone will keep me going. Under the Immigration (Guardianship of Children) Act 1946, it is statutorily —

Ms M.M. QUIRK: I am fascinated with what the Attorney General has to say and I would like him to continue.

Mr J.R. QUIGLEY: The member for Cottesloe will get the hang of this; they just gave me an extension!

It was a very important point that Hon Colin Barnett raised in this chamber. The commonwealth government brought all these children to Australia under this scheme and told Britain that it would be the guardian of these children, and here was the legislation. The government of the time wanted to populate Australia. It placed them in institutions around Australia, and Western Australia got half of them—nearly 3 000—yet now the commonwealth

is saying that in situations in which any of these children seek compensation, it will not contribute 10c to children whom it was the guardian of. We are holding the line on that.

I must give credit to Hon Dan Tehan, the new federal Minister for Social Services. I sat down with him in Sydney or Melbourne—one forgets where it is—and he was amenable to a conversation on this when I explained it to him. We have had officers of the Department of the Premier and Cabinet working with Mr Tehan's staff to resolve these two issues. I would like to know whether or not we can join this scheme at the same time as these amendments come into force. I think it would be regrettable if, once we proclaim this act, victims thought that their only way for compensation was to go to court. I would like to resolve this issue with the commonwealth government. If we can get across the line on these two last issues, we can bring them in concurrently so that any victim can make his or her choice: "Do I want to go to court and have to prove it on the balance of probabilities, be cross-examined and go through that whole rigmarole, or do I want to go under redress where there is a maximum cap of $150 000, but no costs or problems involved?"

Those are our general concerns, if I have answered those three queries for the member in the presence of the victims. I have also explained this to the victims as well. We are lucky that we have this two-month hold with the Legal Costs Committee because I think we are due back in Canberra in about two weeks to try to resolve these last two issues. What would I personally like? I would like to see the whole thing come together so people have a choice about which way to go, but I am not going to have the commonwealth putting it all on Western Australia to pick up. Even with the child migrants, Western Australia has some obligation towards them. I am not saying to the commonwealth, "You pick up 100 per cent"; I am saying, "Morally, come to the party and make your contribution and we'll make our contribution. We've all got a responsibility for what happened to the victims in our community."

Mr P.A. KATSAMBANIS: I refer to a couple of things that the Attorney General raised. The issue of the national redress scheme, particularly as it applies to child migrants, is, as the Attorney General indicated, one on which the former Premier Hon Colin Barnett expressed some views. This is my personal opinion: I share that view, and the view of the Attorney General. The new federal minister, Dan Tehan, is a wonderful man. I served with his mother, a great colleague—in a Parliament "over there", as the Attorney General put it—the late Marie Tehan, who was a fantastic health minister, too.

Mr J.R. Quigley: He was very reasonable in our discussions.

Mr P.A. KATSAMBANIS: He is a reasonable man and I hope for the sake of the victims and for the sake of our Federation that this matter is resolved sooner rather than later. I cannot speak for the opposition; I do not think we have ever formally had a position on it, but personally I think the Attorney General is on the right path and that the commonwealth has not only a moral, but also, as would be recognised in any court of competent jurisdiction, some sort of legal obligation to child migrants who were abused under the commonwealth government's guardianship.

The other issue the Attorney General raised is the cost of this particular scheme. We can put the national redress scheme to one side for the moment because we do not know what it is going to look like in the end, but with regard to this scheme, the Attorney General has previously given to this house some figures in relation to its cost. My only question, which I hope the Attorney General can answer in a couple of words, is: have any updated figures been provided to the Attorney General by the department, Treasury or anybody else; and, if they have, what are they? I preface that by saying that I realise we are asking how long is a piece of string, but do we at least we have some decent guesstimates, for want of a better term?

Mr J.R. QUIGLEY: I am happy to answer that question, although it is not exactly relevant to the —

Mr P.A. Katsambanis: You raised it!

Mr J.R. QUIGLEY: I know; I raised it in response to the member, and I am happy to answer the question, because I think it needs ventilation. No, I do not have updated figures because the Treasury analysts want to know whether we are in redress or not, because there will be some sucked out of this scheme into redress if we are in. Some people will find it more attractive to go to redress for a whole lot of reasons. The standard of proof in redress is a lot lower than it is in a civil court; it is "reasonably likely to have occurred", which was the test under the previous Western Australian redress scheme. They looked at it and said there would be a matrix. By "matrix", I mean that the person says that he was abused in such-and-such an institution by a particular bloke, so they will have a matrix and they will know whether there were other people who had been abused at that institution.: "Was he saying that he was abused in 1973 by X? Was X at that institution in 1973? Were there other victims of X at that institution in 1973?" Without extensive cross-examination or putting that person to proof, they can say, "Yes, it's reasonably likely that this woman is telling the truth." We think people will find redress more convenient and more attractive than going to the District Court. Personally, if I can work hard with the commonwealth, by the time the costs

committee has finished, we can try to get to a position at which we can say it is all fired up and we have a menu of opportunities. That is —

Mr P.A. Katsambanis: By interjection, would you accept that for the majority of people, given the standard of proof and also the adversarial process of a civil action, you would prefer it if fewer people had to resort to civil liability claims and more people went to the national redress scheme?

Mr J.R. QUIGLEY: Of course I agree it would be more attractive, not just for the government but for victims, to go down the redress path, but we have to leave that to the victims because some of them have suffered such horrendous abuse that $150 000 is too low; they might need $300 000 or whatever.

I cannot answer any further the question of whether there are any latest figures until we have landed on redress. If we do not join redress then all these people will have to go under this scheme and these costs will go up. But it is not a question of costs; it is a question of: what is the best path for justice for victims? That is what we have to focus on. What is the best path for justice for victims?

Question put and passed; the Council's amendment agreed to.

Mr J.R. QUIGLEY: I move —

> That amendment 2 made by the Council be agreed to.

This amendment partly touches upon an issue raised in this chamber by the member for Scarborough. In debate with the member for Scarborough, we said that we would keep an eye on what we could do to protect from double payments and double dipping, because we have criminal injuries compensation and then civil litigation. This amendment did not come out of the committee. This was the effort of Hon Nick Goiran, who is a legal practitioner. I want to pay tribute to Hon Nick Goiran for bringing this amendment forward. During debate, I indicated to the member for Scarborough that we would continue to look at this whole vexed area of criminal injuries compensation and damages under the writ, so Hon Nick Goiran came forward with his suggested amendment. We said that if he put the amendment up, the government would agree with it.

Let us quickly look at section 68 of the Criminal Injuries Compensation Act. Section 68(1) states —

> If —
>
> (a) a compensation award is made in respect of any injury or loss suffered by a victim or a close relative of a deceased victim; and
>
> (b) the victim or close relative also receives or recovers in respect of that injury or loss an amount under a contract of insurance or by way of damages or compensation, otherwise than under this Act; and
>
> (c) that amount is not deducted under section 42(3) or (4),
>
> an amount equal to the lesser of —
>
> (d) the amount awarded to the victim or close relative under the compensation award; or
>
> (e) the amount referred to in paragraph (b), is a debt due to the State …

Once a person had received their criminal injuries compensation and then the award there would be a debt due and owing to the state. The odd thing is that when they receive their compensation from the court, that debt would have been deducted already because the act provides that the court has to take into account any other award for compensation. A person would get an award for criminal injuries compensation—say they get $75 000—and then go to court. They were going to get an award of $300 000, but under the legislation the court must take into account the prior award of $75 000 and deduct it. Suddenly, by operation of section 68—thank you, Hon Nick Goiran—under the provisions of section 68(1), they would have to pay that back as a debt to the state, so the person would lose out. It is only just. I want to acknowledge Hon Nick Goiran's vigilance on drawing this situation to the government's attention. The amendment did not come out of the committee. We support that amendment. I am happy to stand here and acknowledge Hon Nick Goiran's effort and support the amendment.

Mr P.A. KATSAMBANIS: Thank you, Attorney General. First, I want to commend the member for Scarborough, who raised this issue as a concern. This is not a case of double dipping; this is a case of a double penalty or double jeopardy, at the end of the day.

Mr J.R. Quigley: It's double deduction.

Mr P.A. KATSAMBANIS: Yes, it is double deduction. It is a double penalty to a person who is already suffering grave harm. Again, this shows how effectively our bicameral system of parliamentary democracy can work. I also want to commend Hon Nick Goiran, who is probably the most experienced—I would say is the most experienced—

legal mind in Parliament on compensation for injuries and criminal compensation. He has practised in this area for a long time and he understands it better than most practitioners in the area. He doggedly pursued this issue and I am glad that the government did not take too long at all to understand that what he proposed is logical and sensible. The amendment corrects a serious flaw. It is an unintended flaw because, as we know, there are different acts referred to in this legislation. As the Attorney General said before there is the interaction of the Legal Profession Act with the cost cap and the like. Sometimes there are unintended consequences when acts try to interact with each other. The interaction between the two houses brought up this issue—initially through the good work of the member for Scarborough—and that was followed up by someone who is expert in this area, or as expert as they can be in this place, and we are in a situation in which, as I said, the government very quickly accepted this amendment in good faith. The amendment strengthens the legislation and makes it better, particularly for victims who will not suffer that double penalty, or double deduction, that they otherwise would have suffered. So, I urge speedy passage of this amendment.

Question put and passed; the Council's amendment agreed to.

Mr J.R. QUIGLEY: I move —

That amendment 3 made by the Council be agreed to.

In furtherance of this amendment I simply ask the chamber to adopt, or take as read, all my comments on amendment 1.

Mr P.A. KATSAMBANIS: Likewise, I ask the chamber to take into account my comments on amendment 1. That amendment implemented a review of part 2A, which will be introduced into the existing act by this bill, and then, obviously, this particular amendment 3, which the Attorney General has just read in, introduces a review procedure to part 7. Those are the two operative parts of the Civil Liability Act 2002 that will be amended and that is what will be reviewed. This amendment also arose from the Legislative Council's review of the bill. The amendment is supported by all parties and we urge it speedy passage.

Question put and passed; the Council's amendment agreed to.

Mr J.R. QUIGLEY: I move —

That amendment 4 made by the Council be agreed to.

This will amend the long title of the act. The bullet points on the long title read —

An Act to amend —

- **the Civil Liability Act 2002; and**

Then we will have the new bullet point moved by this amendment, followed by —

- **the Limitation Act 2005.**

This will alert those who turn to the act that it amends not only two acts, but three acts.

Mr P.A. KATSAMBANIS: Obviously, the opposition supports this. This is a consequential amendment on amendment 2, which amended the Criminal Injuries Compensation Act 2003. These comments could bring out some parts of the obsession I have with legislation being done in the right order. We have made the other substantive amendments to the bill and have now gone back to the first page of the bill with the final amendment. I will not spend too much time labouring that point; my obsession with neatness and correctness sometimes does not need to be expressed too fully. We passed amendment 2, so it makes logical sense to update the list of acts that will be amended to recognise that. That is what amendment 4 does. We do not have any problem with that; in fact, we support it. It was moved initially by a member of the Liberal Party in the other place, Hon Nick Goiran, who has been praised by both the Attorney General and me for the work that he has done on this bill, and we wish it speedy passage.

With the indulgence of the house, I want to take a moment to, firstly, thank the victims and their families. They are the ones who have kept this issue on the radar. They have badgered members of Parliament for a long time to get this fixed. The Attorney General even said that it came onto his radar because one of his constituents, Ms Pratt, put it on his agenda. He has pursued it doggedly since and good on him for that. I want to thank the victims for persisting with this. Secondly, I want to say to the victims that I hope this legislation will give them the opportunity to pursue the financial compensation they deserve for what happened to them, which should never happen to anyone. I get emotional about this because no human being should ever be subjected to it. I hope the victims get the financial compensation that they deserve. We know that they will never get closure and that no amount of financial compensation can compensate them for the harm they, their families and loved ones have suffered—we know that. Unfortunately, as legislators, we cannot fix that, but we can and will give them this opportunity, as

described in some of the contributions today by the Attorney General, to seek financial compensation under this scheme and, hopefully, have the alternative of the national redress scheme when it is agreed to. The Attorney General indicated today that he is working in good faith to agree to it. I know Dan Tehan and the sort of person he is. I am sure he and the federal government—Malcolm Turnbull, Christian Porter and everyone else who is involved in this—will also act in good faith in this area. Hopefully, the victims will get the opportunity to choose the course of action that they think will be best for them.

I also want to comment on the work of the honourable Graham Jacobs—he is honourable, is he not?—the former member for Eyre and previously for Roe. I want to commend Graham for his work. We had differences about whether the bill that he introduced into this place would do what it was intended to do, but we never had any argument whatsoever about the intention. His good work must be acknowledged in this place. I acknowledge it and put it on the record.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.